

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

RITA'S WATER ICE FRANCHISE
COMPANY, LLC

Plaintiff,

v.

S.A. SMITH ENTERPRISES,
LLC, et. al.

Defendants.

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: CIVIL ACTION
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: NO. 10-4297
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ORDER

AND NOW, this 29th day of March 2011, in light of: (1) the failure of Defendants S.A. Smith Enterprises, LLC, Shirley A. Smith, and Jeffrey B. Smith ("Defendants") to make initial disclosures pursuant to Federal Rule of Civil Procedure 26(a) and as required by the Court's January 11, 2011 Order (Doc. No. 26); (2) the failure of Defendants to appear and attend the Rule 16 Pretrial Conference held on February 18, 2011, as directed by the Court's January 11, 2011 Order (Doc. No. 26); (3) the failure of defense counsel to confer with counsel for Plaintiff Rita's Water Ice Franchise Company, LLC ("Rita's") and submit a Joint Report of the Federal Rule of Civil Procedure 26(f) conference by the deadline set forth in the Court's January 11, 2011 Order (Doc. No. 26); (4) the failure of defense counsel to appear and attend a hearing held on March 1, 2011 as required by the Court's February 23, 2011 Order (Doc. No. 33); and (5) the failure of defense counsel and Defendants to appear at the March 22, 2011 status conference as required by the Court's March 2, 2011 scheduling order (Doc. No. 34), and for the reasons stated in the Court's March 29, 2011 Opinion it is **ORDERED** that:

1. Plaintiff Motion for Sanctions in the form of default judgment is **GRANTED**.

2. Pursuant to Federal Rule of Civil Procedure 37(b)(2)(A)(vi), the Clerk of Court shall enter **DEFAULT JUDGMENT** against Defendants.

It is further **ORDERED** that a Permanent Injunction against Defendants is **GRANTED** as follows:

1. For the time period commencing on the date of this Order and ending on July 20, 2012, Defendants are **ENJOINED** from selling within (3) miles of the Franchise Territory,¹ products which are the same as, or substantially similar to those products offered by Rita's Water Ice Franchise Company, LLC Franchises as directed by paragraph 17.3 of Rita's Water Ice Franchise LLC Franchise Agreement. Defendants are prohibited from selling soft serve ice cream, Pearly's Italian ice, "Pearlatis," "Pearly's Shakes" and any other product similar to those offered by Rita's Franchises at or within three (3) miles of the Franchise Territory under the name Pearly's Sweet Creative Desserts or any other name;
2. Defendants are permanently **ENJOINED** from using Rita's proprietary batch machines; and
3. Within twenty (20) days of the entry of this Order, Defendants are **ORDERED** to:
 - a. Deliver to Rita's the "dasher" and "door" of each of the Rita's batch machine that is currently in Defendants' possession, in exchange for which Rita's will pay Defendants upon receipt of the dasher(s) and door(s) the sum of \$100 for the pair of the dasher and door from each batch machine;

¹ The Franchise Territory is defined as a two and one half mile radius surrounding the franchise location, 2080 Timothy Road, Athens, Georgia 30606.

and

- b. Surrender for pick up by Rita's the mobile Cart, in exchange for which Rita's will pay Defendants the value as determined by paragraph 16.9 of the Rita's Water Ice Franchise LLC Franchise Agreement.

Judgment for damages, if appropriate, will be entered in an amount to be determined upon disposition of Plaintiff's Motion for Damages.

BY THE COURT:

/s/ Joel H. Slomsky, J.
JOEL H. SLOMSKY, J.